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# Maine Labor Relations Board Annual Report, Fiscal Year 2003

Maine Labor Relations Board

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ANNUAL REPORT  
MAINE LABOR RELATIONS BOARD

Fiscal Year 2003

This report is submitted pursuant to 26 M.R.S.A. §§ 968(7) and 979-J(1) (1988).

Introduction

\_\_\_\_\_ During the past year, the Board had requests for services from most segments of the public sector that have statutorily conferred collective bargaining rights. As will be noted later in this report, demand for the Board's services was up significantly compared to the previous year. The downturn in the state economy throughout most of the reporting period reduced the resources available to fund collective bargaining settlements, resulting in an overall increase in demand for the Board's services this year.

Members of the Board serve four-year terms, with the term of office of each primary member expiring on September 30 of successive years. The terms of the alternate members expire at the same time as that of their respective primary member. This year, the terms of the primary and alternate Employer Representatives expired. Governor King nominated Karl Dornish, Jr., of Winslow for reappointment as the Employer Representative, and nominated Edwin S. Hamm of Portland for reappointment as Alternate Employer Representative. Alternate Employer Representative Nelson Megna indicated that he did not seek reappointment and Richard L. Hornbeck of Bowdoinham was nominated as Second Alternate Employer Representative. All of the nominations were confirmed by the Legislature, pursuant to unanimous recommendations by the Joint Standing Committee on Labor. Public Chair Peter T. Dawson of Hallowell and Employee Representative Carol B. Gilmore of Charleston continued to serve in their respective capacities, as did Alternate Chairs Jared S. des Rosiers of Falmouth and Pamela D. Chute of Brewer, and Alternate Employee Representatives Wayne W. Whitney of Brunswick and Robert L. Piccone of Portland.

Continuing an initiative begun two years ago, the Board, the State Board of Arbitration and Conciliation, and the Panel of Mediators co-hosted a seminar for our client community this year, entitled "Ethics in Labor Relations." The seminar attracted 30 practitioners and was held on December 6, 2002, at the Portland office of the

Department of Human Services. The Board of Overseers of the Bar awarded Maine attorneys continuing legal education credit for attending and participating in this program. These seminars have been particularly well received by labor relations practitioners because relevant continuing education opportunities are non-existent in Maine and the sessions foster informal interaction among practitioners and agency neutrals, away from the heat of a particular dispute or bargaining situation.

As in past years, the staff of the Board handled a great many inquiries from public employers and employees or their representatives, the media, and members of the public. The staff is the primary source of information for persons interested in the operations and procedures of Maine's public sector labor laws. In those instances that involved matters over which the Board has no jurisdiction, the staff continued the policy of providing some orientation for the inquirer, suggesting other agencies or organizations that might be of help, and making appropriate referrals.

The Board's web site continued to be the prime source for research of Board precedent. The site is equipped with a search engine and contains an extensive database of the Board's prohibited practice and representation appeals decisions, as well as Superior and Supreme Judicial Court opinions reviewing the Board's decisions. Access to this case law helps public employers and bargaining agents to know the parameters of required or permitted conduct and to use such information to avoid violating the law. The web site was updated this year to allow researchers to find precedent by entering the names of the parties in a given case. The web site also includes links to the statutes administered by the Board, the complete text of the Board's Rules and Procedures, the Board's forms, a bulletin board of current activities, and links to other state and federal labor relations agency sites. Another improvement introduced this year was the ability to complete Board forms on-line and then print out the completed document for filing. The web site is maintained and updated by Board staff and has been highly praised by the labor-management community.

### Legislative Matters

Two bills were introduced this year that would have a direct substantive impact on the agency or its jurisdiction. The first measure, entitled An Act to Extend the Jurisdiction of the Maine Labor Relations Board to Employees of Public Higher

Education Institutions Who Have Been Employed Less than Six Months (L.D. 68), is now Chapter 76 of the Public Laws of 2003, with an effective date of September 3, 2003.

Previously, those employed in public post-secondary education were excluded from the coverage of the University of Maine System Labor Relations Act (“UMSLRA”), 26 M.R.S.A. ch. 12, during their first 6 months of employment. This bill, as amended by input from a consensus of interested parties, does 3 things: 1) it extends the coverage of the UMSLRA to all employees whose classifications are in a bargaining unit, without regard to length of service -- meaning that from initial hire, a person has an enforceable statutory right to join an employee organization and participate in its activities free from employer interference, restraint, coercion, or discrimination, and they can vote in Board-conducted representation elections; 2) it extends all terms and conditions of the applicable collective bargaining agreement to employees from the time they are first hired, except for just cause for discharge protection during their initial 6 months of employment; and 3) it protects the University Act employers’ right to terminate unsatisfactory employees without having to establish just cause during the initial 6 months of employment and makes the duration of any probationary period beyond the initial 6 months of employment a mandatory subject of bargaining.

The second bill, L.D. 1344, An Act To Give Teachers a Greater Voice in School Improvement, was carried over to the Second Regular Session. Current law controlling collective bargaining for school district employees provides, in relevant part, that the public employer and the bargaining agent have the mutual obligation “[t]o confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration . . . except that public employers of teachers shall meet and consult but not negotiate with respect to educational policies; for the purpose of this paragraph, educational policies shall not include wages, hours, working conditions or contract grievance arbitration . . . .” The dichotomy between the scope of mandatorily negotiable subjects and educational policy matters gives rise to significant philosophical and practical differences in K-12 teacher negotiations. This measure does three things: 1) it identifies four specific topics, portions of which have been held to constitute educational policy, and it specifies that such topics are mandatory subjects of bargaining; 2) it permits, but does not require, school districts to negotiate over remaining educational policy matters and, should they incorporate agreements over such issues into the

collective bargaining agreement, permits them to agree to have such agreements enforced through the agreement's grievance arbitration procedure; and 3) it provides 9 factors that interest arbitrators must apply in reaching their award. Proponents and opponents of the bill presented thoughtful and well-reasoned arguments during a 6-hour public hearing, highlighting the depth of the opposing views on this matter. The Joint Standing Committee on Educational and Cultural Affairs voted to carry this matter over to provide an opportunity for the various stakeholders to discuss teacher workload issues over the summer, through the auspices of a study group convened by the Commissioner of Education.

Two other bills considered by the Legislative Joint Standing Committee on Judiciary would have had an impact on the agency's management of the public sector collective bargaining process. L.D. 1218, An Act To Enact the Revised Uniform Arbitration Act, discussed in the annual report of the State Board of Arbitration and Conciliation, was voted out of committee unanimously "ought not to pass." L.D. 1295, An Act To Enact the Uniform Mediation Act, discussed in the annual report of the Panel of Mediators, was carried over by the committee for further consideration. The Board staff monitored 12 additional bills, attending public hearings and work sessions, and otherwise assisting Legislative committees in their consideration of matters that might have potential impact on collective bargaining or agency operations.

#### Bargaining Unit and Election Matters

Perhaps the most noteworthy events relating to the Board and its jurisdiction this year were the decisions by two groups of non-partisan legislative employees to opt to be represented by employee organizations for purposes of collective bargaining. In 1997, the State Employees Labor Relations Act was amended to extend collective bargaining rights to the Legislature's non-partisan staff with the Legislative Council being responsible for the employer functions for Legislative Branch employees. With the exception of Federal Congressional non-partisan employees who gained collective bargaining rights in 1996, Maine's non-partisan Legislative Branch employees may be the only such employees in the nation with collective bargaining rights.

This year, two groups of Legislative employees--a group of professional employees and a group of administrative employees--each reached agreement with the

Legislative Council to create a bargaining unit. The Maine State Employees Association (the employee organization seeking to represent the administrative employee unit) and the Legislative Council agreed to a “card check” procedure for determining whether the Legislative Council would voluntarily recognize the MSEA as the bargaining agent for the administrative unit. If a majority of unit employees indicated that they wished to be represented by MSEA by submitting an executed MSEA authorization card to the Board, then the Legislative Council would recognize MSEA. Under this procedure, unit employees who had not previously signed an authorization card and wished to do so or employees who had signed such card and wished to withdraw their support could do so by visiting the Board’s office within an agreed-to period of time. By agreement of the parties, only the Executive Director would view the cards and determine whether a majority of the unit employees had executed cards opting for representation. A majority of eligible unit employees submitted cards expressing support for MSEA and the Legislative Council voluntarily recognized MSEA as the bargaining agent for the administrative employees unit. The professional employees opted to be represented by the Independent Association of Nonpartisan Legislative Professionals, an unaffiliated employee organization, through a traditional Board-conducted secret ballot election.

During fiscal year 2003, the Board received 23 voluntary agreements or joint filings for the establishment of or change in collective bargaining units. There were 19 of these filings in FY 02, 21 in FY 01, 34 in FY 00, 33 in FY 99, and 39 in FY 98. Of the 23 FY 03 filings, 3 were for municipal or county government units, 13 for educational units, 6 concerned State Executive Branch employees, and 1 involved a Judicial Act unit. The unit agreements were filed by the following employee organizations:

Maine Education Association/NEA <sup>1</sup>	8 agreements
Maine State Employees Association	6
Teamsters Union Local 340	2
AFSCME Council 93	1
Head Custodians Association (SAD 17)	1
Independent Association of Nonpartisan Legislative Professionals	1
Jay Cafeteria Workers Association	1
Jay Secretaries & Library Clerk Association	1

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<sup>1</sup>While reference is made to the Maine Education Association/NEA for sake of simplicity, the various activities described were undertaken by local associations which are affiliated with MEA.

MSAD 59 Secretaries Association	1
MSAD 59 Support Personnel Association	1

Of the 23 filings, 12 were for new units and 11 were for changes to existing units.

Fifteen (15) unit determination or clarification petitions (submitted when there is no agreement on the composition of the bargaining unit) were filed in FY 03: 11 were for determinations and 4 were for clarifications. Four (4) of the new unit petitions actually went to hearing. Agreements were reached in 6 cases, 2 were withdrawn, and 3 are pending. Once a unit petition and response are filed, a member of the Board's staff, other than the assigned hearing officer in the case, contacts the parties and attempts to facilitate agreement on the appropriate bargaining unit. This involvement, successful in 46.6% of the cases this year, saves substantial time and litigation costs for public employers and bargaining agents. There were 14 unit petitions filed in FY 02, 10 in FY 01, 13 in 00, 20 in FY 99, and 17 in FY 98. The unit determination/clarification requests were filed by the following employee organizations:

Maine Education Association/NEA	8 petitions
Maine State Employees Association	2
Teamsters Union Local 340	2
AFSCME Council 93	1
Independent Association of Nonpartisan Legislative Professionals	1
Richmond Employee Association	1

After the scope and composition of the bargaining unit is established, either by agreement or by unit determination, a bargaining agent election is conducted by the Board to determine the desires of the employees, unless a bargaining agent is voluntarily recognized by the public employer. During FY 03 there were 8 voluntary recognitions filed, involving the following employee organizations:

Maine Education Association/NEA	2 voluntary recognitions
Head Custodians Association (SAD 17)	1
Jay Cafeteria Workers Association	1
Jay Secretaries & Library Clerk Association	1
Maine Association of Police	1
Maine State Employees Association	1
MSAD 59 Secretaries Association	1

Eleven (11) bargaining agent election requests were filed in FY 03; 13 elections were actually held, including matters carried forward from FY 02, and 1 election matter is

pending. The bargaining agent election petitions filed this year involved the following employee organizations:

Maine Education Association/NEA	8 petitions
AFSCME Council 93	1
Independent Association of Nonpartisan Legislative Professionals	1
Poland Regional High School Association of Teachers	1

In FY 02, there were 3 voluntary recognitions filed, 9 bargaining agent election requests received, and 3 elections held.

In addition to representation election requests, the Board received 3 requests for decertification/certification. This type of petition involves a challenge by the petitioning organization to unseat an incumbent as bargaining agent for bargaining unit members. The results of the decertification/certification petitions were as follows:

<u>Petitioner</u>	<u>Incumbent Agent</u>	<u>Prevailed</u>
Calendar Islands Captains, Mates and Deckhand Association	United Marine Division, Local 333 I.L.A.	I.L.A.
Brunswick Firefighters Benevolent Association	Teamsters Union Local 340	BFBA
Richmond Police Association	Richmond Employee Assn.	Pending

The Board received no straight decertification petitions in FY 03. No new union is involved in these petitions; rather, the petitioner is simply attempting to remove the incumbent agent.

There were 8 election matters carried over from FY 02. Consequently, there were 22 such matters requiring attention during the fiscal year; this compares with 18 in FY 02, 17 in FY 01, 30 in 00, 33 in FY 99, and 36 in FY 98

#### Dispute Resolution

The Panel of Mediators is the statutory cornerstone of the dispute resolution process for public sector employees. Its importance continues to be reflected in its



volume of activity and in its credibility with the client community. The activities of the Panel are summarized in this report and are more fully reviewed in the Annual Report of the Panel of Mediators.

The number of new mediation requests received during the fiscal year increased significantly. There were 64 new requests filed this year compared with 54 last year. In addition to the new mediation requests received during FY 03, there were 23 matters carried over from FY 02 that required some form of mediation activity during the year. Thus the total number of mediation matters requiring the Panel's attention in this fiscal year was 87, up from 77 in FY 02. During the downturn in the regional economy in the early 1990's, most parties were opting for one-year agreements, hoping that more favorable conditions would prevail the following year. As a result, many more agreements expired in FY 93 and FY 94 than would normally be expected. Beginning in mid-FY 1994, more parties resumed negotiating multi-year agreements. Given the statutory restriction that collective bargaining agreements not exceed three years' duration, last year's report anticipated continued growth in demand for mediation services. With the downturn in the regional economy and the state revenue shortfall that surfaced late last fiscal year, the resources available for the settlement of labor agreements became tighter, resulting in increased demand for mediation services.

This year the settlement rate for cases where mediation was concluded, including carryovers from FY 02, increased somewhat this year. This year's settlement rate was 83.1%. During the past 15 years, the settlement rate has ranged from 50% in FY 1995 to 85.9% in FY 2001, with a mean of 75.53%. Anecdotal evidence from the mediators and partisan representatives suggests that the reduction in resources to fund settlements this year coupled with significant increases in health insurance premiums, as well as several high-profile plant closures in the private sector, resulted in a more difficult bargaining climate this year. Since both new filings and cases carried over from prior years contributed to the actual workload of the Panel in the course of the twelve-month period, we have reported settlement figures that represent all matters in which mediation activity has been completed during the reporting period.

No requests for preventive mediation services were received this year. Interest in non-confrontational, interest-based negotiations in the labor-management community has

waned in the last two years, despite the effectiveness of the process in achieving settlements (53 settlements in 55 cases). In fact, prior to FY 02, all of the preventive mediation efforts were successful. Preventive mediation is only undertaken upon the joint request of the parties; therefore, the absence of request for such services is another indication of the increased difficulty negotiating agreements this year.

Fact finding is the second step in the three-step statutory dispute resolution process. In Fiscal Year 2003, 23 fact-finding requests were filed. Those requests represent a significant increase from last year's level. Eight (8) petitions were withdrawn or otherwise settled, 8 requests went to hearing, and 9 petitions are pending hearing. Last year 10 fact-finding hearings were held. The following employee organizations filed requests for fact-finding services this year:

Maine Education Association	11 requests
Teamsters Union Local 340	11
International Association of Firefighters	1

Last year, the Maine Education Association filed 13 requests and Teamsters Local 340 filed none. This year's requests reflect the increasing difficulty in reaching agreements in the municipal sector. The increased number of fact-finding requests filed is yet another indication of the more challenging bargaining climate this year.

Interest arbitration is the third and final step in the statutory dispute resolution process. Under the provisions of the various public employee statutes administered by the Board and unless agreed otherwise by the parties, an interest arbitration award is binding on the parties on non-monetary issues. Salaries, pensions and insurance issues are subject to interest arbitration, but an award on these matters is only advisory. In recent years the Board has received few interest arbitration requests. None were received this year or last year. One was filed in FY 01, none in FY 00, 2 in FY 99, and 2 in FY 98.

The various labor relations statutes do not require parties to notify the Board when they are invoking mandatory interest arbitration. The statutes do require that arbitration awards be filed with the Board; however, they usually are not. This year, no interest arbitration reports were received. While we assume that this means that there were no interest arbitration awards in the public sector during the year, it may be that parties have

simply failed to provide proper notification to the Board.

### Prohibited Practices

One of the Board's main responsibilities is to hear and rule on prohibited practice complaints. Formal hearings are conducted by the full, three-person Board in such matters. Twenty-three (23) complaints were filed in FY 03. This represents an increase over the FY 02 level. During the last 5 years, the number of complaints filed each year has fluctuated from a low of 17 to a high of 26, with the mean being 21.2. Many of the complaints received during the past year charge violations of the duty to negotiate in good faith.

In addition to the 23 complaints filed in FY 03, there were 10 carryovers from FY 02, compared with 17 complaints and 17 carryovers last year. Board panels conducted 1 evidentiary hearing day during the year, compared with 0 in FY 01. The Board issued formal Decisions and Orders in 2 cases on the basis of stipulated records; hence, no evidentiary hearing was required. Board chairs, sitting as prehearing officers, held conferences in 7 cases, compared with 7 in FY 02. Five (5) cases are being held in abeyance: 3 in arbitration, 1 in mediation and 1 awaiting contract execution. Twelve (12) complaints were dismissed or withdrawn at the request of the parties. Three (3) complaints await prehearing and/or hearing, 2 cases are pending Board deliberation and/or decision, and 1 case is awaiting withdrawal. Two (2) cases were dismissed by the executive director and 6 cases have sufficiency reviews pending.

The executive director has continued to be actively involved settling prohibited practice cases through telephone conferences and personal meetings with the parties' representatives. Continuing a development introduced in FY 96, the services of the executive director or a Board attorney are offered on the day of the hearing to attempt to settle cases. If the parties either decline the Board's offer or if the effort is unsuccessful, the Board members are present, ready to convene a formal evidentiary hearing.

Prohibited practice complaints were filed by the following this year:

Teamsters Union Local 340	7 complaints
Individuals	5
AFSCME Council 93	4
Maine Education Association/NEA	4

International Association of Firefighters	1
International Association of Machinists	1
Maine State Employees Association	1

### Appeals

At the end of FY 2002, two representation case appeals were carried forward into the current reporting period. Both cases, a unit determination matter, *York County and Teamsters Union Local 340*, No. 02-UDA-01 (MLRB Sept. 27, 2002), and a unit clarification case, *Town of Topsham and Local S/89, District Lodge #4, International Association of Machinists and Aerospace Workers*, No. 02-UCA-01 (MLRB Aug. 29, 2002), were heard and decided by the Board this year and both cases were appealed to the Superior Court as noted below. Two new representation appeals were heard and decided by the Board this year. In *York County and Teamsters Union Local 340*, No. 03-EA-01 (MLRB Nov. 12, 2002), the Board held that a representation election would not be stayed pending the outcome of an appeal before the Superior Court of the underlying unit determination decision. The case of *Maine Maritime Academy and Maine State Employees Association*, No. 03-UCA-01 (MLRB May 15, 2003), presented the Board with only its second opportunity to consider a unit issue under the University of Maine System Labor Relations Act. The Board reversed the hearing examiner decision in part, concluding that a classification substantially altered by the Academy Board of Trustees to include responsibility for a significant part of the Academy's overall mission is the functional equivalent of a vice president and should be excluded from any bargaining unit.

Two decisions of the Maine Labor Relations Board were appealed to Superior Court during the past year. The Superior Court affirmed the conclusions of the Board in both cases.

In *York County v. Teamsters and MLRB*, the County appealed the Board's conclusion that the Municipal Public Employees Labor Relations Law ("MPELRL") did not preclude a particular union from representing a bargaining unit of supervisory employees when that same union represents a unit of those supervisors' subordinate employees. The Board's decision reaffirmed the conclusion it had drawn in a 1982 case on the very same issue. The Superior Court concluded that the statute was not ambiguous

and deferred to the Board's expertise in administering the statute. Docket No. AP-02-64 (York Cty. Sup. Ct., Fritzsche, J.) (Jan. 31, 2003).

In *Town of Topsham v. Local S/89 District Lodge #4, Intl. Assn. of Machinists and Aerospace Workers and M.L.R.B.*, the Town appealed the Board's conclusion that the Town Clerk and the Tax Collector did not meet the definition of department heads specified in the MPELRL and therefore should not be removed from the Supervisory bargaining unit. The MPELRL requires department heads to be "appointed pursuant to statute", which in Topsham's case meant pursuant to the Town Manager Plan, which in turn requires confirmation by the Board of Selectmen. The Board found that this confirmation had not occurred. The Superior Court concluded that the Board's analysis was consistent with the language of the statutes and that the Board's adherence to its own administrative rules regarding evidentiary matters in unit appeals was proper. Docket No. AP-02-68 (Kennebec Cty. Sup. Ct., Studstrup, J.) (March 20, 2003).

A final matter pending in Superior Court is a motion filed by an individual whose prohibited practice case against his former employer and former union was dismissed by the Board in 1997, after a full evidentiary hearing. The motion, which the individual filed without the assistance of an attorney, seeks to have his case reopened in Superior Court or remanded to the Board. It purports to be filed under M.R.Civ.Pro. 60(b), Relief From Judgment or Order. *Larry Casey v. M.L.R.B.*, Docket No. AP-97-90 (Motion filed in Kennebec Superior Court on April 2, 2003). Mr. Casey's attorney in the Board case had previously appealed the Board's decision to Superior Court, but that appeal was dismissed in early 1998. Mr. Casey, acting *pro se*, had subsequently attempted to get the Board's decision reviewed by trying to attach it to a related case, but that effort was denied by both the Superior Court and the Law Court. A decision of the Superior Court on Mr. Casey's motion is pending.

### Summary

The following chart summarizes the filings for this fiscal year, along with the previous five years:

	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
Unit Determination/ Clarification Requests Number filed--	17	+17.7% 20	-35% 13	-23.1% 10	+40% 14	+7% 15
Agreements on Bargaining Unit (MLRB Form #1) Number filed--	39	-15.4% 33	+3% 34	-38.2% 21	-9.5% 19	+21% 23
Voluntary Recognitions (MLRB Form #3) Number filed--	7	-42.9% 4	+200% 12	-41.7% 7	-57.1% 3	+167% 8
Bargaining Agent Election Requests Number filed--	16	+18.75% 19	-36.8% 12	-50% 6	+50% 9	+22% 11
Decertification Election Requests Number filed--	8	-37.5% 5	-80% 1	100% 2	-50% 1	-100% 0
Decert./Certification Election Requests Number filed--	2	+150% 5	+20% 6	-67% 2	+150% 5	-40% 3
Mediation Requests Number filed--	68	+1.5% 69	+5.8% 73	-16.4% 61	-11.5% 54	+18.5% 64
Fact-Finding Requests Number filed--	19	+15.8% 22	-31.8% 15	-13.3% 13	+7.7% 14	+64% 23
Prohibited Practice Complaints Number filed--	20	-5% 19	+36.8% 26	-7.7% 24	-29.2% 17	+35.3% 23

The above table indicates that the demand for the Board's different services has increased during the fiscal year. For the past several years we have been predicting that public sector organizational activity may be nearing the point of saturation, given that the Board has been in existence since 1969 and many units, particularly education and fire fighter units, predated the establishment of the agency. As the number of organized employees approaches the universe of those eligible, the number of new units created

each year will decline. In fact, there was an increase in organizational activity this year and there are more units now than ever before. A larger number of units means more requests for changes in unit composition, more elections to change or oust bargaining agents, a greater potential for prohibited practice complaints, and increased demand for dispute resolution services in the future.

During FY 03, public sector labor-management relations in Maine continued to mature. Parties continue to rely on the statutory dispute processes to settle their differences, rather than resorting to self-help remedies. The development of more mature labor relations is evidenced by the strong demand for mediation services and, despite an increase in the filing of prohibited practice complaints, the continued willingness by the parties to settle in those cases. In sum, the Board's dispute resolution services fostered public sector labor peace throughout the fiscal year.

Dated at Augusta, Maine, this 1st day of July, 2003.

Respectfully submitted,

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Marc P. Ayotte  
Executive Director  
Maine Labor Relations Board